

EXHIBIT 1

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-and-

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

RENE CABRERA and RM CABRERA
COMPANY, INC., Individually and On Behalf of
All Others Similarly Situated.

Plaintiffs.

V.

GOOGLE LLC,

Defendant.

Case No. 5:11-cv-1263-EJD

NON-PARTY DR. JAMES GIBSON'S AMENDED RESPONSES & OBJECTIONS TO GOOGLE LLC'S SUBPOENA TO PRODUCE DOCUMENTS

Pursuant to Rules 26, 34, 36, and 45 of the Federal Rules of Civil Procedure, non-party Dr. James Gibson (“Dr. Gibson) hereby provides the following Responses and Objections to Defendant Google LLC’s Subpoena to Produce Documents (the “Subpoena”).

CONFIDENTIAL**I. OBJECTIONS TO DEFINITIONS**

1. **“Communication.”** Dr. Gibson objects to Defendant’s definition of the term
2 “Communication” (Definition No. 2) to the extent it renders the Requests overly broad and unduly
3 burdensome and seeks to impose obligations in excess of those imposed by the Federal Rules of Civil
4 Procedure. Dr. Gibson also objects to this Definition to the extent it seeks electronically stored
5 information (“ESI”) from sources that are not reasonably accessible in light of the burdens and costs
6 required to locate, restore, review, and produce whatever responsive information may be found, which Dr.
7 Gibson is not required to produce under Federal Rule of Civil Procedure 45(e)(1)(D). Dr. Gibson will
8 respond to each Request pursuant to his obligations under the Federal Rules of Civil Procedure and the
9 Local Rules.

11. 2. **“Document.”** Dr. Gibson objects to Defendant’s definition of the term “Document”
12 (Definition No. 3) because, as used, it renders the Requests overly broad and unduly burdensome and
13 seeks to impose obligations in excess of those imposed by the Federal Rules of Civil Procedure and the
14 Local Rules. Dr. Gibson also objects to this Definition because it potentially seeks information protected
15 from disclosure by the attorney-client privilege, the work product doctrine, the consulting expert privilege
16 and/or any other applicable privileges. Dr. Gibson also objects to this Definition to the extent it seeks
17 documents or ESI from sources that are not reasonably accessible in light of the burdens and costs required
18 to locate, restore, review, and produce whatever responsive information may be found. Dr. Gibson will
19 respond to each Request based on the definition of the term “Document” as set forth in Federal Rule of
20 Civil Procedure 34. Dr. Gibson will not produce any servers, hard drives, flash drives or other storage
21 media described. Notwithstanding this objection, Dr. Gibson will conduct a reasonably diligent search
22 for responsive documents in his possession, custody, or control that are reasonably accessible, and will
23 produce or make available for inspection responsive, relevant and non-privileged documents located as a
24 result of that search.

25. 3. **“Relate to.”** Dr. Gibson objects to Defendant’s definition of the term “relate to”
26 (Definition No. 9) because, as used in the Requests, it renders the Requests overly broad, vague and
27 ambiguous, and unduly burdensome and seeks to impose obligations in excess of those imposed by the
28 Federal Rules of Civil Procedure. Dr. Gibson interprets the term “relate to” (and/or any form thereof, e.g.,

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1 “related to”) throughout his responses as specifically “mentioning” or “referring to,” unless otherwise
 2 specified, as any other definition would fail to designate the documents requested with reasonable
 3 particularity and thus violate the Federal Rules.

4 **II. OBJECTIONS TO INSTRUCTIONS**

5 1. Dr. Gibson objects to Instruction No. 1 (**Documents within Your possession, custody, or**
 6 **control**) to the extent it seeks to impose obligations in excess of those imposed by the Federal Rules of
 7 Civil Procedure, the Local Rules, any orders of the presiding Court, or other applicable law. Dr. Gibson
 8 also objects to the portion of this Instruction that requests Documents “in the possession, custody, or
 9 control of Your agents, attorneys, accountants, representatives or advisors” because it seeks information
 10 protected from disclosure by the attorney-client privilege, the work product doctrine, the consulting expert
 11 privilege and/or any other applicable privilege, and documents protected from disclosure by the Stipulated
 12 Protective Order in this Action, which states: “all communications (regardless of the form) among Counsel
 13 for a Party, a Party’s consulting experts, and that Party’s testifying Expert, and all materials generated by
 14 a testifying Expert with respect to that person’s work, are exempt from discovery unless they relate to the
 15 Expert’s compensation or identify facts, data or assumptions relied upon by the Expert in forming any
 16 opinions in this litigation and such information is not already disclosed in the Expert’s report.” Dkt. No.
 17 103 § 14.6. Subject to and without waiving any objection, Dr. Gibson will comply with the duties and
 18 obligations imposed upon him pursuant to the Federal Rules of Civil Procedure.

19 2. Dr. Gibson objects to Instruction No. 2 (**no Documents exist**) to the extent it seeks to
 20 impose obligations in excess of those imposed by the Federal Rules of Civil Procedure, for example, by
 21 requiring Dr. Gibson to “state that fact.” Subject to and without waiving any objection, Dr. Gibson will
 22 comply with the duties and obligations imposed upon him pursuant to the Federal Rules of Civil
 23 Procedure.

24 3. Dr. Gibson objects to Instruction No. 3 (**manner of production**) to the extent it seeks to
 25 impose obligations in excess of those imposed by the Federal Rules of Civil Procedure. Subject to and
 26 without waiving any objection, Dr. Gibson will comply with the duties and obligations imposed upon him
 27 pursuant to the Federal Rules of Civil Procedure.

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1 4. Dr. Gibson objects to Instruction Nos. 5 and 6 (**privilege**) because they direct Dr. Gibson
2 to provide information not required by the Federal Rules of Civil Procedure. Dr. Gibson further objects
3 to the extent these Instructions seek documents or information protected from disclosure by the attorney-
4 client privilege, the work product doctrine, the consulting expert privilege (Fed. R. Civ. P. 26(b)(4)(D)),
5 § 14.6 of the Stipulated Protective Order, and/or any other applicable privileges. Dr. Gibson further objects
6 to these instructions to the extent they seek to impose on him the obligation to produce a privilege log
7 reflecting his communications with Plaintiffs' counsel. Section 14.5 of the Stipulated Protective Order
8 states that “[n]either Party is required to log information sent or received by Counsel relating to this
9 litigation at any time,” and Section 2.13 defines “Party” to include “retained experts.” Dr. Gibson further
10 objects to these instructions to the extent they impose an undue burden on him in light of the volume of
11 communications exchanged between Plaintiffs’ retained experts and consultants. Subject to and without
12 waiving any objection, Dr. Gibson will comply with the duties and obligations imposed upon him pursuant
13 to the Federal Rules of Civil Procedure, the Local Rules, and as agreed in the Stipulated Protective Order.

14 5. Dr. Gibson objects to Instruction No. 7 (**continuing in nature**) to the extent it seeks to
15 impose obligations in excess of those imposed by Federal Rule of Civil Procedure 45. Federal Rule of
16 Civil Procedure 45 does not require a non-party to supplement productions made in response to a
17 subpoena. Dr. Gibson also objects to Instruction No. 7 to the extent it seeks information protected from
18 disclosure by the attorney-client privilege, the work product doctrine, the consulting expert privilege,
19 § 14.6 of the Stipulated Protective Order, and/or any other applicable privileges. Subject to and without
20 waiving any objection, Dr. Gibson will comply with the duties and obligations imposed upon him pursuant
21 to the Federal Rules of Civil Procedure.

22 **III. SPECIFIC RESPONSES AND OBJECTIONS TO THE REQUESTS FOR PRODUCTION**

23 **REQUEST FOR PRODUCTION NO. 1:**

24 All Documents and Communications related to the making of copies, taking of photographs, and/or
25 creating of transcripts of Google Confidential Documents labeled "HIGHLY CONFIDENTIAL –
26 SOURCE CODE" by You or others, including but not limited to the images, .docx, and .ppt files
27 mentioned in Stacey Kaplan's letter dated August 7, 2024, attached hereto as Exhibit 1.

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1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

2 Dr. Gibson objects to this Request as seeking documents and information that are not relevant to
3 any claims or defenses asserted in this Action or proportional to the needs of the case. Dr. Gibson further
4 objects to this Request to the extent it seeks documents and information outside of his possession, custody,
5 or control. Dr. Gibson further objects to this Request to the extent it seeks information protected from
6 disclosure by the attorney-client privilege, the work product doctrine, the consulting expert privilege, §
7 14.6 of the Stipulated Protective Order, and/or any other applicable privileges.

8 Subject to, and without waiver of, the foregoing objections, Dr. Gibson will produce any
9 responsive, non-privileged documents, to the extent such documents exist and can be located through a
10 reasonably diligent search.

11
12 **REQUEST FOR PRODUCTION NO. 2:**

13 All Documents and Communications related to Your Communications regarding Google
14 Confidential Documents or Google Confidential Information with any person other than Plaintiffs'
15 counsel. This includes but is not limited to any confidentiality agreement that Mr. Christian Baehr signed
16 as referenced in Stacey Kaplan's letter dated August 7, 2024, attached hereto as Exhibit 1.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

18 Dr. Gibson objects to this Request as seeking documents and information that are not relevant to
19 any claims or defenses asserted in this Action or proportional to the needs of the case. Dr. Gibson objects
20 to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege,
21 the work product doctrine, the consulting expert privilege, § 14.6 of the Stipulated Protective Order, and/or
22 any other applicable privileges.

23 Subject to, and without waiver of, the foregoing objections, Dr. Gibson will produce any
24 responsive, non-privileged documents, to the extent such documents exist and can be located through a
25 reasonably diligent search.

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REQUEST FOR PRODUCTION NO. 3:

All Documents and Communications related to Your Communications regarding Google Confidential Documents or Google Confidential Information with Dr. Joseph L. Sutherland after February 28, 2022.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Dr. Gibson objects to this Request as seeking documents and information that are not relevant to any claims or defenses asserted in this Action or proportional to the needs of the case. Dr. Gibson objects to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, the consulting expert privilege, § 14.6 of the Stipulated Protective Order, and/or any other applicable privileges.

Subject to, and without waiver of, the foregoing objections, Dr. Gibson states that, based on his reasonably diligent search, he provided to or discussed with Dr. Joseph L. Sutherland the following Google Confidential Documents or Google Confidential Information after February 28, 2022:

August 2023

1. 2/6/2018 letter from E. Evans to M. Mustokoff

January-February 2024 (all materials provided to Dr. Sutherland before February 17, 2024)

2. Plaintiffs' February 15, 2024 data request

3. Production specification memos dated January 25, 2024 and January 30, 2024

4. Cabrera change history (GOOG00910471)

5. Cabrera log file (GOOG00910475)

6. Excerpts from Harrower deposition testimony

7. Excerpts from GOOG00681004, 00611659

8. 9/4/2018 spreadsheet containing AdWords location criteria

REQUEST FOR PRODUCTION NO. 4:

All Documents and Communications after February 28, 2022 related to Dr. Sutherland's access to or analysis, discussion, or use of any Google Confidential Document or Google Confidential Information in connection with the Action.

CONFIDENTIAL**RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

Dr. Gibson objects to this Request as seeking documents and information that are not relevant to any claims or defenses asserted in this Action or proportional to the needs of the case. Dr. Gibson further objects to this Request to the extent it seeks documents and information outside of his possession, custody, or control. Dr. Gibson objects to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, the consulting expert privilege, § 14.6 of the Stipulated Protective Order, and/or any other applicable privileges.

Subject to, and without waiver of, the foregoing objections, Dr. Gibson states that, based on his reasonably diligent search, he provided to or discussed with Dr. Joseph L. Sutherland the following Google Confidential Documents or Google Confidential Information after February 28, 2022:

August 2023

1. 2/6/2018 letter from E. Evans to M. Mustokoff

January-February 2024 (all materials provided to Dr. Sutherland before February 17, 2024)

2. Plaintiffs' February 15, 2024 data request

3. Production specification memos dated January 25, 2024 and January 30, 2024

4. Cabrera change history (GOOG00910471)

5. Cabrera log file (GOOG00910475)

6. Excerpts from Harrower deposition testimony

7. Excerpts from GOOG00681004, 00611659

8. 9/4/2018 spreadsheet containing AdWords location criteria

REQUEST FOR PRODUCTION NO. 5:

All Documents and Communications related to Mr. Baehr's access to or analysis, discussion, or use of any Google Confidential Document or Google Confidential Information in connection with the Action.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Dr. Gibson objects to this Request as seeking documents and information that are not relevant to any claims or defenses asserted in this Action or proportional to the needs of the case. Dr. Gibson objects

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1 to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege,
2 the work product doctrine, the consulting expert privilege, § 14.6 of the Stipulated Protective Order, and/or
3 any other applicable privileges.

4 Subject to, and without waiver of, the foregoing objections, Dr. Gibson will produce any
5 responsive, non-privileged documents, to the extent such documents exist and can be located through a
6 reasonably diligent search.

7
8 **REQUEST FOR PRODUCTION NO. 6:**

9 All Documents and Communications related to any discussions or Communications between You
10 and Dr. Sutherland, You and Mr. Baehr, You and any Plaintiffs' counsel, and/or others related to Dr.
11 Sutherland's employment at Amazon.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

13 Dr. Gibson objects to this Request as seeking documents and information that are not relevant to
14 any claims or defenses asserted in this Action or proportional to the needs of the case. Dr. Gibson objects
15 to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege,
16 the work product doctrine, the consulting expert privilege, § 14.6 of the Stipulated Protective Order, and/or
17 any other applicable privileges.

18 Subject to, and without waiver of, the foregoing objections, Dr. Gibson will produce any
19 responsive, non-privileged documents, to the extent such documents exist and can be located through a
20 reasonably diligent search.

21
22 **REQUEST FOR PRODUCTION NO. 7:**

23 All Documents relating to Dr. Sutherland's employment and/or application for employment at
24 Amazon.

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

26 Dr. Gibson objects to this Request as seeking documents and information that are not relevant to
27 any claims or defenses asserted in this Action or proportional to the needs of the case. Dr. Gibson further
28 objects to this Request to the extent it seeks documents and information outside of his possession, custody,

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1 or control. Dr. Gibson objects to this Request to the extent it seeks information protected from disclosure
2 by the attorney-client privilege, the work product doctrine, the consulting expert privilege, § 14.6 of the
3 Stipulated Protective Order, and/or any other applicable privileges.

4 Subject to, and without waiver of, the foregoing objections, Dr. Gibson will produce any
5 responsive, non-privileged documents, to the extent such documents exist and can be located through a
6 reasonably diligent search.

7

8 **REQUEST FOR PRODUCTION NO. 8:**

9 All Documents and Communications related to any discussions or Communications between You
10 and Dr. Sutherland, You and Mr. Baehr, You and any Plaintiffs' counsel, and/or others related to Mr.
11 Baehr's involvement in the Action.

12 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

13 Dr. Gibson objects to this Request as seeking documents and information that are not relevant to
14 any claims or defenses asserted in this Action or proportional to the needs of the case. Dr. Gibson objects
15 to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege,
16 the work product doctrine, the consulting expert privilege, § 14.6 of the Stipulated Protective Order, and/or
17 any other applicable privileges.

18 Subject to, and without waiver of, the foregoing objections, Dr. Gibson will produce any
19 responsive, non-privileged documents, to the extent such documents exist and can be located through a
20 reasonably diligent search.

21

22 **REQUEST FOR PRODUCTION NO. 9:**

23 All Documents and Communications related to any discussion or Communication with Dr.
24 Sutherland, Mr. Baehr, any Plaintiffs' counsel, and/or others related to the employment, application for
25 employment, or potential employment of Dr. Sutherland by a seller of Internet advertising, including but
26 not limited to Amazon.

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1 RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

2 Dr. Gibson objects to this Request as seeking documents and information that are not relevant to
3 any claims or defenses asserted in this Action or proportional to the needs of the case. Dr. Gibson objects
4 to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege,
5 the work product doctrine, the consulting expert privilege, § 14.6 of the Stipulated Protective Order, and/or
6 any other applicable privileges. Dr. Gibson further objects as vague and ambiguous the term “seller of
7 Internet advertising.”

8 Subject to, and without waiver of, the foregoing objections, Dr. Gibson will produce any
9 responsive, non-privileged documents, to the extent such documents exist and can be located through a
10 reasonably diligent search.

12 REQUEST FOR PRODUCTION NO. 10:

13 Documents and Communications sufficient to identify each individual who assisted You in Your
14 preparation of the code and memorandum served on Google on March 1, 2024. For the avoidance of doubt,
15 this request includes Documents and Communications related to Matthew Mustokoff’s assertion on March
16 6, 2024 that “Dr. Sutherland assisted Dr. Gibson in preparing the code attached to Dr. Gibson’s March 1
17 memo.”

18 RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

19 Dr. Gibson objects to this Request as seeking documents and information that are not relevant to
20 any claims or defenses asserted in this Action or proportional to the needs of the case. Dr. Gibson objects
21 to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege,
22 the work product doctrine, the consulting expert privilege, § 14.6 of the Stipulated Protective Order, and/or
23 any other applicable privileges.

24 Subject to, and without waiver of, the foregoing objections, Dr. Gibson states that other than Dr.
25 Sutherland and Plaintiffs’ counsel, no individual assisted “in preparing the code attached to Dr. Gibson’s
26 March 1 memo.”

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REQUEST FOR PRODUCTION NO. 11:

Documents and Communications sufficient to identify each individual who assisted You in Your preparation of the code and memorandum served on Google on March 22, 2024.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

Dr. Gibson objects to this Request as seeking documents and information that are not relevant to any claims or defenses asserted in this Action or proportional to the needs of the case. Dr. Gibson objects to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, the consulting expert privilege, § 14.6 of the Stipulated Protective Order, and/or any other applicable privileges.

Subject to, and without waiver of, the foregoing objections, Dr. Gibson states that no code or memorandum was served on Google on March 22, 2024.

REQUEST FOR PRODUCTION NO. 12:

Documents and Communications sufficient to identify each individual who assisted You in Your preparation of the code and memorandum served on Google on April 29, 2024.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

Dr. Gibson objects to this Request as seeking documents and information that are not relevant to any claims or defenses asserted in this Action or proportional to the needs of the case. Dr. Gibson objects to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, the consulting expert privilege, § 14.6 of the Stipulated Protective Order, and/or any other applicable privileges.

Subject to, and without waiver of, the foregoing objections, Dr. Gibson states that other than Mark Reynolds, Jamarius Taylor, and Plaintiffs' counsel, no individual assisted in "preparation of the code and memorandum served on Google on April 29, 2024."

REQUEST FOR PRODUCTION NO. 13:

Documents sufficient to identify the dates on which Mr. Baehr first analyzed, discussed, or used any Google Confidential Document or Google Confidential Information.

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RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

Dr. Gibson objects to this Request as seeking documents and information that are not relevant to any claims or defenses asserted in this Action or proportional to the needs of the case. Dr. Gibson objects to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, the consulting expert privilege, § 14.6 of the Stipulated Protective Order, and/or any other applicable privileges.

Subject to, and without waiver of, the foregoing objections, Dr. Gibson will produce any responsive, non-privileged documents, to the extent such documents exist and can be located through a reasonably diligent search.

REQUEST FOR PRODUCTION NO. 14:

Documents sufficient to identify the Google Confidential Documents or Google Confidential Information that have at any time been in Dr. Sutherland and/or Mr. Baehr's possession, as well as the dates on which they possessed those documents.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

Dr. Gibson objects to this Request as seeking documents and information that are not relevant to any claims or defenses asserted in this Action or proportional to the needs of the case. Dr. Gibson further objects to this Request to the extent it seeks documents and information outside of his possession, custody, or control. Dr. Gibson objects to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, the consulting expert privilege, § 14.6 of the Stipulated Protective Order, and/or any other applicable privileges.

Subject to, and without waiver of, the foregoing objections, Dr. Gibson states that he will produce all Google Confidential Documents or Google Confidential Information that he provided to Mr. Baehr. Dr. Gibson further states that, based on his reasonably diligent search, he provided to or discussed with Dr. Joseph L. Sutherland the following Google Confidential Documents or Google Confidential Information between 2017 and 2024:

2017

1. 10/30/2017 letter from E. Evans to M. Mustokoff

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1 2. 2017 click sample (Table 1 and Table 2)

2 3. Woods click data

3 4. Spreadsheet containing property codes

4 **2018**

5 1. 5/27/2015 letter from E. Evans to D. Pate

6 2. Attachment 1-AR (referenced in 5/27/2015 letter from E. Evans to D. Pate)

7 3. 10/30/2017 letter from E. Evans to M. Mustokoff

8 4. 2/6/2018 letter from E. Evans to M. Mustokoff

9 5. 2017 click sample (Table 1 and Table 2)

10 6. 9/4/2018 spreadsheet containing AdWords location criteria

11 7. Spreadsheet containing property codes for Cabrera's clicks

12 8. Appendix E to J. Gibson's 7/9/2015 expert report

13 9. 1/16/2018 J. Gibson expert report

14 10. Drafts of 5/15/2018 J. Gibson expert report

15 11. Drafts of 11/8/2018 J. Gibson expert report

16 12. Drafts of 12/20/2018 J. Gibson expert report

17 13. Draft response to 3/20/2018 Coatney Declaration

18 14. 3/20/2018 L. Wu expert report

19 15. 6/5/2018 L. Wu expert report

20 16. 11/29/2018 L. Wu expert report

21 17. Cabrera log file (GOOG00910475)

22 18. Draft outline for J. Gibson supplemental report (not finalized)

23 19. Excerpts from Kunz 30(b)(6) deposition testimony

24 20. Cabrera click data

25 21. GOOG00674315-56

26 22. Transcript of J. Althaus deposition

27 23. Woods click data

28 24. Draft of Plaintiffs' motion to strike expert declaration of L. Wu

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- 1 25. GOOG00523027
- 2 26. Excerpts from 3/20/2018 Coatney Declaration
- 3 27. Prod055 containing 224 sample log files
- 4 28. .ppt file containing pictures of Google source code
- 5 29. .doc file containing transcriptions of Google source code
- 6 30. .doc file containing notes regarding Google source code
- 7 31. PDF of December 2018 Source Code production

December 2021

- 9 1. 6/14/2018 Gibson expert report

August 2023

- 11 1. 2/6/2018 letter from E. Evans to M. Mustokoff

January-February 2024 (all materials provided to Dr. Sutherland before February 17, 2024)

- 13 1. Plaintiffs' February 15, 2024 data request
- 14 2. Production specification memos dated January 25, 2024 and January 30, 2024
- 15 3. Cabrera change history (GOOG00910471)
- 16 4. Cabrera log file (GOOG00910475)
- 17 5. Excerpts from Harrower deposition testimony
- 18 6. Excerpts from GOOG00681004, 00611659
- 19 7. 9/4/2018 spreadsheet containing AdWords location criteria

REQUEST FOR PRODUCTION NO. 15:

22 All Documents and Communications between You and Mr. Baehr regarding the Action.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

24 Dr. Gibson objects to this Request as seeking documents and information that are not relevant to
25 any claims or defenses asserted in this Action or proportional to the needs of the case. Dr. Gibson objects
26 to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege,
27 the work product doctrine, the consulting expert privilege, § 14.6 of the Stipulated Protective Order, and/or
28 any other applicable privileges.

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1 Subject to, and without waiver of, the foregoing objections, Dr. Gibson will produce any
2 responsive, non-privileged documents, to the extent such documents exist and can be located through a
3 reasonably diligent search.

4

5 **REQUEST FOR PRODUCTION NO. 16:**

6 Documents sufficient to identify the dates, if any, on which Dr. Sutherland and/or Mr. Baehr was
7 instructed to destroy any Google Confidential Documents or Google Confidential Information in their
8 possession.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

10 Dr. Gibson objects to this Request as seeking documents and information that are not relevant to
11 any claims or defenses asserted in this Action or proportional to the needs of the case. Dr. Gibson further
12 objects to this Request to the extent it seeks documents and information outside of his possession, custody,
13 or control. Dr. Gibson further objects to this Request to the extent it seeks documents and information
14 outside of his possession, custody, or control. Dr. Gibson objects to this Request to the extent it seeks
15 information protected from disclosure by the attorney-client privilege, the work product doctrine, the
16 consulting expert privilege, § 14.6 of the Stipulated Protective Order, and/or any other applicable
17 privileges.

18 Subject to, and without waiver of, the foregoing objections, Dr. Gibson states that he does not have
19 any documents responsive to this Request in his possession, custody, or control.

20

21 **REQUEST FOR PRODUCTION NO. 17:**

22 Documents sufficient to identify the dates, if any, on which Dr. Sutherland and/or Mr. Baehr was
23 instructed to stop accessing or reviewing Google Confidential Documents.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

25 Dr. Gibson objects to this Request as seeking documents and information that are not relevant to
26 any claims or defenses asserted in this Action or proportional to the needs of the case. Dr. Gibson further
27 objects to this Request to the extent it seeks documents and information outside of his possession, custody,
28 or control. Dr. Gibson further objects to this Request to the extent it seeks documents and information

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1 outside of his possession, custody, or control. Dr. Gibson objects to this Request to the extent it seeks
2 information protected from disclosure by the attorney-client privilege, the work product doctrine, the
3 consulting expert privilege, § 14.6 of the Stipulated Protective Order, and/or any other applicable
4 privileges.

5 Subject to, and without waiver of, the foregoing objections, Dr. Gibson states that he does not have
6 any documents responsive to this Request in his possession, custody, or control.

7 **REQUEST FOR PRODUCTION NO. 18:**

8 Documents sufficient to identify the dates, if any, on which You were instructed not to share
9 Google Confidential Documents or Google Confidential Information with Dr. Sutherland and/or Mr.
10 Baehr.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

12 Dr. Gibson objects to this Request as seeking documents and information that are not relevant to
13 any claims or defenses asserted in this Action or proportional to the needs of the case. Dr. Gibson objects
14 to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege,
15 the work product doctrine, the consulting expert privilege, § 14.6 of the Stipulated Protective Order, and/or
16 any other applicable privileges.

17 Subject to, and without waiver of, the foregoing objections, Dr. Gibson will produce any
18 responsive, non-privileged documents, to the extent such documents exist and can be located through a
19 reasonably diligent search.

20
21 **REQUEST FOR PRODUCTION NO. 19:**

22 Documents sufficient to identify the dates, if any, on which You were instructed to not work or to
23 stop work with Dr. Sutherland and/or Mr. Baehr in connection with the Action.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

25 Dr. Gibson objects to this Request as seeking documents and information that are not relevant to
26 any claims or defenses asserted in this Action or proportional to the needs of the case. Dr. Gibson objects
27 to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege,

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1 the work product doctrine, the consulting expert privilege, § 14.6 of the Stipulated Protective Order, and/or
2 any other applicable privileges.

3 Subject to, and without waiver of, the foregoing objections, Dr. Gibson will produce any
4 responsive, non-privileged documents, to the extent such documents exist and can be located through a
5 reasonably diligent search.

6

7 **REQUEST FOR PRODUCTION NO. 20:**

8 All Documents and Communications related to Andrew Pate's assertion on February 26, 2024 that
9 "Dr. Sutherland has not had access to confidential information in this case since December 2018."

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

11 Dr. Gibson objects to this Request as seeking documents and information that are not relevant to
12 any claims or defenses asserted in this Action or proportional to the needs of the case. Dr. Gibson further
13 objects to this Request to the extent it seeks documents and information outside of his possession, custody,
14 or control. Dr. Gibson also objects to this Request to the extent it seeks information protected from
15 disclosure by the attorney-client privilege, the work product doctrine, the consulting expert privilege, §
16 14.6 of the Stipulated Protective Order, and/or any other applicable privileges.

17 Subject to, and without waiver of, the foregoing objections, Dr. Gibson states that he does not have
18 any documents in his possession, custody, or control that relate to "Andrew Pate's assertion on February
19 26, 2024 that 'Dr. Sutherland has not had access to confidential information in this case since December
20 2018.'"

21

22 **REQUEST FOR PRODUCTION NO. 21:**

23 All Documents and Communications related to Dr. Sutherland's access to Google Confidential
24 Documents or Google Confidential Information after December 2018, including but not limited to any
25 restrictions or limitations on his access.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

27 Dr. Gibson objects to this Request as seeking documents and information that are not relevant to
28 any claims or defenses asserted in this Action or proportional to the needs of the case. Dr. Gibson further

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1 objects to this Request to the extent it seeks documents and information outside of his possession, custody,
2 or control. Dr. Gibson objects to this Request to the extent it seeks information protected from disclosure
3 by the attorney-client privilege, the work product doctrine, the consulting expert privilege, § 14.6 of the
4 Stipulated Protective Order, and/or any other applicable privileges.

5 Subject to, and without waiver of, the foregoing objections, Dr. Gibson states that, based on his
6 reasonably diligent search, he provided to or discussed with Dr. Joseph L. Sutherland the following Google
7 Confidential Documents or Google Confidential Information after December 2018:

8 **December 2021**

9 1. 6/14/2018 Gibson expert report

10 **August 2023**

11 1. 2/6/2018 letter from E. Evans to M. Mustokoff

12 **January-February 2024 (all materials provided to Dr. Sutherland before February 17, 2024)**

13 1. Plaintiffs' February 15, 2024 data request
14 2. Production specification memos dated January 25, 2024 and January 30, 2024
15 3. Cabrera change history (GOOG00910471)
16 4. Cabrera log file (GOOG00910475)
17 5. Excerpts from Harrower deposition testimony
18 6. Excerpts from GOOG00681004, 00611659
19 7. 9/4/2018 spreadsheet containing AdWords location criteria

20 **REQUEST FOR PRODUCTION NO. 22:**

21 All Documents and Communications related to Dr. Sutherland's review of his notes or other
22 Google Confidential Documents related to the Action in or around November 2023. For the avoidance of
23 doubt, this request seeks all Documents and Communications related to Matthew Mustokoff's assertion
24 on March 6, 2024 that "in November 2023, [Dr. Sutherland] reviewed notes that he wrote in 2018"

25 **RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

26 Dr. Gibson objects to this Request as seeking documents and information that are not relevant to
27 any claims or defenses asserted in this Action or proportional to the needs of the case. Dr. Gibson further

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1 objects to this Request to the extent it seeks documents and information outside of his possession, custody,
2 or control. Dr. Gibson also objects to this Request to the extent it seeks information protected from
3 disclosure by the attorney-client privilege, the work product doctrine, the consulting expert privilege, §
4 14.6 of the Stipulated Protective Order, and/or any other applicable privileges.

5 Subject to, and without waiver of, the foregoing objections, Dr. Gibson will produce any
6 responsive, non-privileged documents in his possession, custody, or control, to the extent such documents
7 exist and can be located through a reasonably diligent search.

8

9 **REQUEST FOR PRODUCTION NO. 23:**

10 All Documents and Communications related to payments or invoices, including unpaid requested
11 payments and/or unpaid invoices, for Dr. Sutherland's work in connection with the Action, including but
12 not limited to any invoices issued and/or paid in connection with work in the Action or Google
13 Confidential Documents.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

15 Dr. Gibson objects to this Request as seeking documents and information that are not relevant to
16 any claims or defenses asserted in this Action or proportional to the needs of the case. Dr. Gibson objects
17 to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege,
18 the work product doctrine, the consulting expert privilege, § 14.6 of the Stipulated Protective Order, and/or
19 any other applicable privileges.

20 Subject to, and without waiver of, the foregoing objections, Dr. Gibson will produce any
21 responsive, non-privileged documents, to the extent such documents exist and can be located through a
22 reasonably diligent search.

23

24 **REQUEST FOR PRODUCTION NO. 24:**

25 All Documents and Communications related to payments or invoices, including unpaid requested
26 payments and/or unpaid invoices, for Mr. Baehr's work in connection with the Action, including but not
27 limited to any invoices issued and/or paid in connection with work in the Action or Google Confidential
28 Documents.

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RESPONSE TO REQUEST FOR PRODUCTION NO. 24:

Dr. Gibson objects to this Request as seeking documents and information that are not relevant to any claims or defenses asserted in this Action or proportional to the needs of the case. Dr. Gibson objects to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, the consulting expert privilege, § 14.6 of the Stipulated Protective Order, and/or any other applicable privileges.

Subject to, and without waiver of, the foregoing objections, Dr. Gibson will produce any responsive, non-privileged documents, to the extent such documents exist and can be located through a reasonably diligent search.

REQUEST FOR PRODUCTION NO. 25:

All Documents and Communications related to the stipulated protective order, Dkt. 103.

RESPONSE TO REQUEST FOR PRODUCTION NO. 25:

Dr. Gibson objects to this Request as seeking documents and information that are not relevant to any claims or defenses asserted in this Action or proportional to the needs of the case. Dr. Gibson objects to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, the consulting expert privilege, § 14.6 of the Stipulated Protective Order, and/or any other applicable privileges.

Subject to, and without waiver of, the foregoing objections, Dr. Gibson will produce any responsive, non-privileged documents, to the extent such documents exist and can be located through a reasonably diligent search.

DATED: October 7, 2024

Respectfully submitted,

**KESSLER TOPAZ
MELTZER & CHECK, LLP**

/s/ Matthew L. Mustokoff

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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2024, a true and correct copy of the foregoing document was served via electronic mail and overnight mail upon all counsel of record.

/s/ Margaret E. Mazzeo
Margaret E. Mazzeo

CERTIFICATE OF SERVICE